

1 JUDGE RICARDO S. MARTINEZ  
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67 UNITED STATES DISTRICT COURT  
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UNITED STATES OF AMERICA,	)	NO. CR12-133RSM
Plaintiff,	)	SUPPLEMENTAL RESPONSE TO
vs.	)	GOVERNMENT'S TRIAL BRIEF
MARK F. SPANGLER,	)	[DKT. 95]
Defendant.	)	

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## I. INTRODUCTION

In its trial brief, [Dkt. 95], the Government contends at pp. 20-21 that Mr. Spangler may not introduce his out-of-court statements through witnesses. It is unclear exactly how broad a declaration the Government intended to make. In light of this, the defense submits this supplemental memorandum to highlight that statements made between Mr. Spangler and his investors can be admissible, particularly if they are not offered to prove the truth of the matter asserted and relate to the alleged fraud.

The essential underpinning of the Government's argument is that these statements would be hearsay - *i.e.*, statements introduced to prove the truth of the matter asserted. Even assuming that the Government is correct regarding hearsay statements, its argument has no bearing on statements that are offered for other purposes. In this case,

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1 the Government will be introducing numerous statements by Mr. Spangler to his clients,  
 2 claiming that these statements were part of a scheme to defraud. The Government does  
 3 not have the right to pick and choose - it is the entirety of Mr. Spangler's statements to  
 4 his clients that will determine whether he engaged in such a scheme.

5 For example, if the Government introduces evidence that one page of Mr.  
 6 Spangler's written materials sent to his client made a particular representation, Mr.  
 7 Spangler has every right to present evidence that he made another representation that  
 8 may put the Government's evidence in context. Such a statement would not be to prove  
 9 the fact of what Mr. Spangler stated, but to prove that he made a particular statement to  
 10 the client. His statements to his clients will also be admissible to prove what they had  
 11 heard, which may be relevant both to whether another statement would be misleading to  
 12 them and to whether that other statement would be material.

13 The case of *United States v. Gibson*, 690 F.2d 697, 701 (9th Cir. 1982) is  
 14 instructive. In that case, the Ninth Circuit held that statements made by salesmen to  
 15 investors were not hearsay but were relevant to the Government's allegation that a  
 16 scheme existed. The court quoted approvingly from a Tenth Circuit case holding that  
 17 "the admission of conversations between alleged victims and participants in the scheme  
 18 did not raise an 'actual hearsay question' because the testimony was not offered for its  
 19 veracity." *Id.* at 700 (internal citation omitted, quoting *United States v. Krohn*, 573 F.2d  
 20 1382, 1386 (10th Cir. 1978)). This analysis applies even where the truth or falsity of the  
 21 statements is also "important to the outcome of the case," so long as the statements are  
 22 admitted to prove they were made. *Gibson*, 690 F.2d at 700 n.1.

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## II. CONCLUSION

The defense submits that the analysis of *Gibson* supports the defense position that statements that Mr. Spangler made to his investors are admissible if related to the alleged scheme to defraud, as outlined above.

DATED this 11th day of October, 2013.

Respectfully submitted,

s/ John R. Carpenter  
JOHN R. CARPENTER  
Attorney for Mark Spangle

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the date below I e-filed with the Clerk of the Court the foregoing Supplemental Response to Government's Trial Brief [Dkt. 95]. I used the CM/ECF system which will send notification of such filing to the Assistant United States Attorneys on record and all interested parties.

DATED this 11th day of October, 2013.

*s/ Delia Bonaparte*

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